



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 312

[EPA-HQ- OLEM-2021-0946; FRL-9334-01-OLEM]

Standards and Practices for All Appropriate Inquiries

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to amend the Standards and Practices for All Appropriate Inquiries to reference a standard practice recently made available by ASTM International, a widely recognized standards development organization. Specifically, EPA is proposing to amend the All Appropriate Inquiries Rule to reference ASTM International’s E1527-21 “Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process” and allow for its use to satisfy the requirements for conducting all appropriate inquiries under the Comprehensive Environmental Response, Compensation, and Liability Act. In the “Rules and Regulations” section in this issue of *Federal Register*, EPA is amending the All Appropriate Inquiries Rule to reference ASTM International’s E1527-21 standard practice as a direct final rule without a prior proposed rule. If we receive no adverse comment, we will not take further action on this proposed rule.

DATES: Written comments must be received by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID No. **EPA-HQ-OLEM-2021-0946** at www.regulations.gov: Follow the on-line instructions for submitting comments. Once submitted, comments cannot be edited or removed from [regulations.gov](https://www.regulations.gov). The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI and multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: For more detailed information on specific aspects of this proposed rule, contact Patricia Overmeyer, Office of Brownfields and Land Revitalization (5105T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460-0002, 202-566-2774, or Overmeyer.patricia@epa.gov

SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us,” and “our” refer to the EPA.

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I. Why is EPA Issuing This Proposed Rule?

With this action EPA proposes to amend the All Appropriate Inquiries Rule at 40 CFR part 312 to reference ASTM International’s E1527-21 “Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process” and allow for its use to satisfy the requirements for conducting all appropriate inquiries under CERCLA. We published a direct final rule amending the All Appropriate Inquiries Rule

to reference the ASTM E1527-21 standard and allow for its use to comply with the All Appropriate Inquiries Rule in the “Rules and Regulations” section in this issue of the *Federal Register* because we view this as a noncontroversial action and anticipate no adverse comment. We explained our reasons for this action in the preamble to the direct final rule.

If EPA receives no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment, we will withdraw the direct final rule and it will not take effect. We will then address all public comments in any subsequent final rule based on this proposed rule. We do not intend to institute a second comment period on this action. Any parties interested in commenting on this proposal must do so at this time or the direct final rule will take effect. For further information, please see the information provided in the **ADDRESSES** section of this document.

II. Does this Action Apply to Me?

This action offers certain parties the option of using an available industry standard to conduct all appropriate inquiries. Parties purchasing potentially contaminated properties will be able to use the ASTM E1527-21 standard practice to comply with the all appropriate inquiries requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). This proposed rule will not require any entity to use this standard. Any party who wants to claim protection from liability under one of CERCLA’s landowner liability protections may follow the regulatory requirements of the All Appropriate Inquiries Rule at 40 CFR part 312, use the ASTM E1527-13 standard, use the ASTM E2247-16 “Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process for Forestland or Rural Property,” or use the standard recognized in this proposed rule, the ASTM E1527-21 standard.

Entities potentially affected by this action, or who may choose to use the newly referenced ASTM standard to perform all appropriate inquiries, include public and private parties who, as bona fide prospective purchasers, contiguous property owners, or innocent landowners, are purchasing potentially contaminated properties and wish to establish a limitation on CERCLA liability in conjunction with the property purchase. In addition, any entity conducting a site characterization or assessment on a property with a brownfields grant awarded under CERCLA section 104(k)(2)(B)(ii) may be affected by this action. This includes state, local and Tribal governments that receive brownfields site assessment grants. A summary of the potentially affected industry sectors (by North American Industry Classification System (NAICS) codes) is displayed in the table below.

Industry Category	NAICS Code
Real Estate	531
Insurance	52412
Banking/ Real Estate Credit	522292
Environmental Consulting Services	54162
State, Local and Tribal Government	926110, 925120
Federal Government	925120, 921190, 924120

The list of potentially affected entities in the above table may not be exhaustive. Our aim is to provide a guide for readers regarding those entities that EPA is aware potentially could be affected by this action. However, this action may affect other entities not listed in the table. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** Section of this document.

III. What Should I Consider as I Prepare My Comments for EPA?

Direct your comments to Docket ID No. EPA-HQ-OLEM-2021-0946. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

A. Submitting CBI: Do not submit any information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. You can only submit CBI to EPA via U.S. mail at: HQ EPA Docket Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, D.C. 20460. Clearly mark all information that you claim to be CBI. For CBI submitted on a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

B. Tips for Preparing Your Comments: When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register date, and page number).
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

- Provide specific examples to illustrate your concerns and suggested alternative.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

The www.regulations.gov website is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters or any form of encryption, and be free of any defects or viruses. For additional information about EPA’s public docket visit the EPA Docket Center homepage at <https://www2.epa.gov/edockets/commenting-epa-dockets>.

C. The docket: All documents in the docket are listed in the www.regulations.gov index.

Certain types of information claimed as CBI, and other information whose disclosure is restricted by statute, will not be available for public viewing in EPA’s electronic public docket. EPA’s policy is that copyrighted material, such as ASTM International’s E1527-21 “Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process” will not be placed in EPA’s electronic public docket but will be publicly available only in printed form in the

official public docket. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the HQ EPA Docket Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC 20460. Please note: Due to public health concerns related to COVID-19, the EPA Docket Center and Reading Room are open to the public by appointment only, and walk-ins are not allowed. Visitors to the Reading Room must complete docket material requests in advance and then make an appointment to retrieve the material. Please contact the EPA Reading Room staff at (202) 566-1744 or via the Dockets Customer Service email at docket-customerservice@epa.gov to arrange material requests and appointments.

IV. Statutory Authority

EPA is proposing to amend the All Appropriate Inquiries Rule that sets Federal standards for the conduct of “all appropriate inquiries” at 40 CFR part 312. The All Appropriate Inquiries Rule sets forth standards and practices necessary for fulfilling the requirements of CERCLA section 101(35)(B) as required to obtain CERCLA liability protection and for conducting site characterizations and assessments with the use of brownfields grants per CERCLA section 104(k)(2)(B)(ii).

V. Background

On January 11, 2002, President Bush signed the Small Business Liability Relief and Brownfields Revitalization Act (“the Brownfields Amendments”). In general, the Brownfields Amendments to CERCLA provide funds to assess and cleanup brownfields sites; clarify existing and establish new CERCLA liability provisions related to certain types of owners of contaminated properties; and provide funding to establish or enhance State and Tribal cleanup programs. The Brownfields Amendments revised some of the provisions of CERCLA section 101(35) and limited liability under section 107 for bona

fide prospective purchasers and contiguous property owners, in addition to clarifying the requirements necessary to establish the innocent landowner liability protection under CERCLA. The Brownfields Amendments clarified the requirement that parties purchasing potentially contaminated property undertake “all appropriate inquiries” into prior ownership and use of property before purchasing the property to qualify for protection from CERCLA liability.

The 2002 Brownfields Amendments to CERCLA required EPA to develop regulations establishing standards and practices for how to conduct all appropriate inquiries. EPA promulgated regulations that set standards and practices for all appropriate inquiries on November 1, 2005 (70 FR 66070). In the regulation, EPA referenced, and recognized as compliant with the rule, the ASTM E1527-05 “Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Standard Process.” In December 2008, EPA used a direct final rule to amend the All Appropriate Inquiries Rule to recognize another ASTM standard as compliant, ASTM E2247-08 “Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process for Forestland or Rural Property.” Both standards, the ASTM E1527-05 and the ASTM E2247-08, were subsequently revised by ASTM International, and the revised versions were referenced by EPA as compliant with the All Appropriate Inquiries Rule. EPA referenced the ASTM E1527-13 standard on August 15, 2013 (78 FR 49690) and referenced the ASTM E2247-16 standard on September 15, 2017 (82 FR 43310). Currently, the All Appropriate Inquiries Rule (40 CFR part 312) allows for the use of the ASTM E1527-13 standard or the ASTM E2247-16 standard to conduct all appropriate inquiries, in lieu of following requirements included in the Rule. Once this action is final, the All Appropriate Inquiries Rule also will allow for the use of the ASTM E1527-21 standard.

Recently, ASTM International published a revised standard for conducting Phase I environmental site assessments. This standard, ASTM E1527-21, “Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process,” was reviewed by EPA, and determined by EPA to be compliant with the requirements of the All Appropriate Inquiries Rule.

VI. What Action is EPA Taking Today?

This action will amend the All Appropriate Inquiries Rule to allow for the use of ASTM E1527-21 to conduct all appropriate inquiries as required under CERCLA for establishing the bona fide prospective purchaser, contiguous property owner, and innocent landowner liability protections.

With this proposed action, parties seeking liability relief under CERCLA’s landowner liability protections, as well as recipients of brownfields grants for conducting site assessments, will be considered in compliance with the requirements for all appropriate inquiries if such parties comply with the procedures provided in the ASTM E1527-21, “Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process.” EPA determined that it is reasonable to promulgate this clarification as a direct final rule that is effective immediately, rather than delay promulgation of the clarification until after receipt and consideration of public comments. EPA made this determination based upon the Agency’s finding that the ASTM E1527-21 standard is compliant with the All Appropriate Inquiries Rule, and the Agency sees no reason to delay allowing for its use in conducting all appropriate inquiries.

The Agency notes that this action will not require any party to use the ASTM E1527-21 standard. Any party conducting all appropriate inquiries to comply with CERCLA’s bona fide prospective purchaser, contiguous property owner, and innocent landowner liability protections may continue to follow the provisions of the All

Appropriate Inquiries Rule at 40 CFR part 312, or continue to use either the ASTM E1527-13 standard or use the ASTM E2247-16 standard.

This proposed action merely will allow for the use of the ASTM E1527-21 “Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process” for those parties purchasing potentially contaminated properties who want to use the ASTM E1527-21 standard in lieu of the following specific requirements of the All Appropriate Inquiries Rule.

The Agency notes that there are no legally significant differences between the regulatory requirements and the ASTM E1527 standards. To facilitate an understanding of the slight differences between the All Appropriate Inquiries Rule, the ASTM E1527-13 “Phase I Environmental Site Assessment Standard,” and the revised ASTM E1527-21 “Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process,” as well as the applicability of the E1527-21 standard for certain types of properties, EPA developed, and placed in the docket for this proposed action, the document “Comparison of All Appropriate Inquiries Regulation, the ASTM E1527-13 Phase I Environmental Site Assessment Process, and ASTM E1527-21 Phase I Environmental Site Assessment Process.” The document provides a comparison of the two ASTM E1527 standards.

EPA’s proposed action includes no changes to the All Appropriate Inquiries Rule other than to add an additional reference to the new ASTM E1527-21 standard. EPA is not seeking comments on the standards and practices included in the All Appropriate Inquiries Rule published at 40 CFR part 312. Also, EPA is not seeking comments on the ASTM E1527-21 standard. EPA’s only action with this proposed rule is recognition of the ASTM E1527-21 standard as compliant with the All Appropriate Inquiries Rule and, therefore, it is only this action on which the Agency is seeking comment.

EPA is proposing this action because the Agency wants to provide additional flexibility for brownfields grant recipients or other entities that may benefit from the use of the ASTM E1527-21 standard. We believe that this proposed action will allow for the use of a tailored standard that was developed by a recognized standards developing organization, reviewed by EPA, and determined to be equivalent to the Agency's All Appropriate Inquiries Rule. This action does not disallow the use of the previously recognized standards (ASTM E1527-13 or ASTM E2247-16), and it will not alter the requirements of the previously promulgated All Appropriate Inquiries Rule. In addition, this proposal potentially will increase flexibility for some parties who may make use of the new standard, without placing any additional burden on those parties who prefer to use either the ASTM E1527-13 standard or the ASTM E2247-16 or to follow the requirements of the All Appropriate Inquiries Rule when conducting all appropriate inquiries.

By proposing this action, EPA is fulfilling the intent and requirements of the National Technology Transfer and Advancement Act (NTTAA), Public Law 104-113.

VII. Statutory and Executive Order Reviews

For a complete discussion of all of the administrative requirements applicable to this action, see the discussion in the "Statutory and Executive Order Reviews" section to the preamble for the direct final rule that is published in the "Rules and Regulations" section in this issue of the *Federal Register*.

Under Executive Order 12866 (58 FR 51735, October 4, 1993) and Executive Order 13563 (76 FR 3821, January 21, 2011), this proposed action is not a "significant regulatory action" and is therefore not subject to OMB review. This action merely amends the All Appropriate Inquiries Rule to reference ASTM International's E1527-21 "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process" and allow for its use to satisfy the requirements for conducting all

appropriate inquiries under CERCLA. This action does not impose any requirements on any entity, including small entities. Therefore, pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), after considering the economic impacts of this action on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 312

Administrative practice and procedure, Hazardous substances.

Barry N. Breen,

Acting Assistant Administrator,

Office of Land and Emergency Management.

[FR Doc. 2022-05260 Filed: 3/11/2022 8:45 am; Publication Date: 3/14/2022]